



**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING
for the State of Andhra Pradesh (Goods and Service Tax)**

(Office at O/o Chief Commissioner of State Tax, Govt. of A.P., D NO 5-56, Block-B,
R.K.Spring Valley Apartment, Bunder Road, Edupugallu, Vijayawada,
Andhra Pradesh – 521151)

Present:

Sri PEEYUSH KUMAR (Member) (State Tax)

Sri NARESH PENUMAKA (Member) (Central Tax)

The 09th day of April, 2021

Order /AAAR/AP/01 (GST)/2021

1	Name and address of the appellant	M/s. Tirumala Milk Products Pvt Ltd, 12-8-8, Prakash Nagar, Narasaraopet, Guntur, Andhra Pradesh - 522601
2	GSTIN	37AABCT7907M1ZU
3	Date of filing of Form GST ARA-02	08.02.2021
4	Hearing (Virtual)	23.03.2021
5	Authorized Representative	CA. Manoranjan Behera
6	Jurisdictional Authority – Centre	Superintendent, Narasaraopet-II Range, Guntur CGST Division.

(Under Section 101 of the Central Goods and Service Tax Act and the Andhra Pradesh Goods and Service Tax Act).

At the outset, we would like to make it clear that the provisions of both the CGST Act and the APGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the APGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and APGST Act"] by M/s. Tirumala Milk Products Pvt Ltd (herein after referred to as the "Appellant") against the Advance Ruling No. AAR No.28/AP/GST/2019 dated 15.07.2019 issued by Authority for Advance Ruling, Andhra Pradesh.

1. Background of the Case:

- The appellant is engaged in the business of processing and manufacturing of milk and milk products in the State of Andhra Pradesh, bearing GST registration No.37AABCT907M1ZU.
- The appellant had filed an application before the Authority for Advance Ruling, Andhra Pradesh, seeking clarification for applicable rate and HSN code for Flavoured Milk on 12.04.2019.
- The ruling was issued specifying the applicable HS Code for Flavoured Milk as 2202 9930 and GST rate as 12 % (6% CGST and 6% SGST) under entry no 50

of schedule II of notification No.1/2017 – Central Tax (Rate), vide order no. AAR No.28/AP/GST/2019, dated 15.07.2019.

- Aggrieved by the Ruling, the appellant had filed a **writ petition** before the Honourable High Court of Andhra Pradesh in WP No. 19393 of 2019.

The Honourable Court vide its order dated 19.01.2021 has directed the appellant to file an appeal before Appellate Authority for Advance Ruling(AAAR) within '3 weeks' time in order to exhaust the alternative remedy of appeal available under Sub Section 1 of Section 100 of APGST Act 2017.

- Accordingly, the appellant filed an application in Form GST ARA-02 on 08.02.2021 before the Appellate Authority for Advance Ruling, Andhra Pradesh seeking clarification.

2. Grounds of Appeal:

The appellant approached this Authority with the following contentions.

1. The ruling of the Authority for Advance Ruling based on an extraneous document is erroneous.
2. The Authority while relying on the said document has completely misconstrued the intention of the legislature. Hence the order is not tenable.

3. Virtual Hearing:

The proceedings of Hearing were conducted through video conference on 23rd March 2021. The authorized representative, CA. Manoranjan Behera attended and presented the following additional submissions.

Additional Submissions:

The submissions of the appellant are presented verbatim

1. That, we draw your kind attention to para No-8.2 of the impugned ruling, wherein, the Hon'ble advance ruling authority has completely misconstrued the process of making flavoured milk and thereby naming it as a preparation and not milk. Hence, the impugned ruling is per se based on a wrong understanding of fact and since not tenable.

We are reinstating Para-8.2 of the impugned ruling for better appreciation of facts.

"The applicant informed that the process of the flavoured milk is standardization of fresh milk according to the fat contents and then heating at certain temperature followed by filtration, pasteurization, and homogenization and then mixing of sugar and various flavours and finally bottling. As per flow chart, it involves various operations by RMRD team, weighing team, processing team, packing team and warehousing dispatch teams and thereby it is a preparation and no more it is fresh milk after adding flavours".

Flavoured milk alike normal milk undergoes the same procedure i.e filtration pasteurization and homogenization. It is a common phenomenon followed by the milk industry to maintain the quality and hygiene of milk and to keep it fit for human consumption.

Filtration is the process to remove unwanted external particles which might

deteriorate the quality of milk, making it unhealthy.

Homogenisation is the process to ensure uniform mixing of fat in the milk.

Pasteurisation is the process in which milk is heated and then cooled to increase its shelf life.

Therefore, the inference drawn by the Hon'ble AAR that involvement of various departments and processes makes flavoured milk a preparation signifies non-application of judicial mind and hence not tenable.

We reiterate that mere adding of sugar and flavour does not change the basic characteristic of milk and flavoured milk has the same nutritional value as normal milk.

In this case the appellant relies on the judgement of Hon'ble High court of Allahabad in the case of Gujarat Milk Marketing Federation Ltd Vs State of U.P, 2017,(5),GSTL 351 (ALL), which held that "Flavoured Milk" is a form of milk, as it is neither a derivative of the milk nor a milk product. It is like hot or cold milk which remains milk even if sugar is added to it, it does not lose its basic characters of milk by heating or cooling or addition of sugar or any permitted colour, essence or flavour. The addition of permitted colour does not transform milk into any other thing.

That in view of the above the appellant most respectfully submits that flavoured milk should be classified under Chapter 4 of the APGST Act and should be taxed at 5%.

2. That, we appreciate the inference drawn by the Ld' Authority by reproducing the events from the Central Excise Regime and while doing so, it has relied on:

- i) The judgement of Honourable High Court of Gujarat in the case of M/s KAIRA DIST. CO-OP, MILK PRODUCERS' UNION LTD Vs. UOI passed in the year 2015 [2015-320-ELT-408-(Guj)] and
- ii) The matters recorded in the agenda of the 31st GST Council Meeting held on 22.12.2018.

It is pertinent to note here that the Honourable High Court in its order in the year 2015 (As quoted in the ruling) had issued direction to the petitioner to make a representation to the Central Government for issuance of clarification with regard to classification of flavoured milk within 7 days of its order and a clarification was expected to come from the Central Government within 30 days. The learned Authority while passing its ruling has jumped into an extraneous document pertaining to the year 2018 i.e. the matters recorded in the agenda of the GST council held on 22.12.2018, ignoring the developments during the period 2015-2018.

We further submit that as understood in business meeting "AGENDA" is a document prepared before conducting meeting and is circulated to the participants of the meeting listing out the various issues/matters to be discussed in the meeting.

And minutes is a document which is prepared post meeting, recording the decision taken on the matters proposed in the agenda. We referred the decision taken by the GST Council in its 31st meeting but failed to get any information about the classification of flavoured milk.

Nevertheless, the appellant submits that the advance ruling Authority deciding the matter relying merely on the inclusion of the impugned issue in the agenda of the 31st GST Council meeting was arbitrary and whimsical.

The appellant hastens to add that the issue was never taken up in the said council meeting as it is evident from the copy of the final decision enclosed.

Therefore, the appellant submits that inference being redundant and smacked revenue bias is untenable.

3. That, the "flavoured milk" is not a water-based drink whereas the tariff heading 2202 deals with water based beverages and other non-alcoholic beverages. Therefore, it could be inferred that the pre-dominant part of the beverages covered under the heading 2202 is water. In the instant case, the pre-dominant constituent is milk and hence the "flavoured milk" does not merit classification under beverage containing milk, under tariff heading 2202 9930, but merits classification as milk, under tariff heading 0402.
 4. That, we draw your attention to the food safety and standards Act, 2006, as the applicant has relied upon the description of FSSAI on "Flavoured Milk". Though the said Act deals with food safety and standards, it contains, under schedule – II, the Milk and milk products order, 1992 in accordance to which, under section 2 (9) "milk of cow, buffalo, sheep, goat or a mixture thereof either raw or processed in any manner and includes pasteurized, sterilized, recombined flavoured, acidified, skimmed, toned, double toned, standardized or full cream milk. It could be seen from above that "Milk" includes pasteurized, sterilized and flavoured milk. Therefore, the product of the appellant is covered under "Milk".
 5. The applicant states that Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. Amrit Foods 2015 (324) ELT 418 (SC) in a dispute concerning to classification of two products namely "milk shake mix" and "soft Serve mix" held as under "Main purpose of the stabilizer was to maintain the product consistency during storage and transportation as well as to improve the shelf life and merely because it improved the body and texture of the product and added some smoothness thereto, that would not change the basic character of the product".
- Therefore, flavoured milk continues to remain as milk and deserves to be classified under chapter 4.
6. That, the appellant takes the reference of the judgement of the Hon'ble Supreme court in the case of Board of Revenue, Ernakulam v. PIO Food Packers 465 STC 63 (SC) in support of their contention. They also state that the Supreme Court had further held that commonly, manufacture is the end result of one or more processes through which the original commodity experiences a change, and the processed commodity should be recognized as a new and distinct article. The

applicant states that in view of the aforesaid judgement, they believe that flavoured milk would continue to be milk despite the fact that sugar, flavour, and colour have been added for increasing the palatability.

7. That, the learned Authority for Advance Ruling Karnataka in the case of Karnataka Co-operative Milk Producers Federation Ltd. has held vide its ruling dated 26.09.2019 that:

"The only relevant entry under tariff heading 2202 is 2202 99 30 that covers "beverages containing milk". The word "beverage", though not defined under CGST Act 2017, is considered, in common parlance, as a drink that can be consumed directly and the instant product "flavoured milk" can also be consumed as it is and hence can be considered as a beverage. Also, since it does not contain any alcohol, it is covered under non-alcoholic beverage, as per the note 3 to the Chapter 22 of the Customs Tariff Act, which reads as under:

"3. For the purpose of heading 2202, the term "non-alcoholic beverages" means beverages of an alcoholic strength by volume not exceeding 0.5%

The instant product "flavoured milk" is undoubtedly a beverage and the alcoholic content is absent which means that the alcoholic content is less than 0.5% by volume.

13.10. *The "flavoured milk" is not a water based drink whereas the tariff heading 2202 deals with water based beverages and other non-alcoholic beverages. Therefore it could be inferred that the pre-dominant part of the beverages covered under the heading 2202 is water. In the instant case the predominant constituent is milk and hence the "flavored milk" does not merit classification under beverage containing milk, under tariff heading 2202 9930, but merits classification as milk, under tariff heading 0402.*

13.11. *Tariff heading 0402 covers "milk and cream, concentrated or containing added sugar or other sweetening matter". The instant product 'flavoured milk' is covered under 'milk' as discussed already. Therefore the instant product merits classification under tariff heading 0402 99 90.*

13.12. *We also take note of the fact that the Hon'ble High Court at Allahabad in the matter of Gujarat Coop. Milk Marketing Federation Ltd. Vs State of UP vide 2017(5)GSTL 351(All) dated 31.05.2017, has decided that flavoured Milk is a form of Milk. The Court has also specifically observed that flavoured milk is a form of milk as it is neither a derivative of milk nor a milk product.*

14. In view of the foregoing, we pass the following ruling.

1. The commodity "flavoured Milk" is classified under the Tariff heading 0402 99 90.

Therefore, the appellant most respectfully submits that its product flavoured milk deserves to be classified under Chapter-4".

4. Discussion and Findings:

We have gone through the submissions made by the appellant against the Ruling pronounced by the Authority for Advance Ruling and it is observed that the main issue of contention is nothing but the classification and the relevant HSN code of the commodity i.e., flavoured milk.

The appellant claims that flavoured milk, akin to normal milk undergoes the same procedures of filtration, pasteurization and homogenization and contends the decision of AAR by arguing that it has the same nutritional value as normal milk even after adding sweetener and flavours to it and **does not change its basic characteristic of milk**. Moreover, in the opinion of the appellant, it's not a preparation at all, even though there is involvement of different departments and processes in the making of flavoured milk. If we examine whether 'addition of flavours to milk' would come under the category of 'food additives', it throws sufficient light on the whole process of the product in dispute, whether it's a preparation, changing the basic characteristic of milk.

As mentioned in the website of World Health Organization,

Flavouring agents – which are added to food to improve aroma or taste – make up the greatest number of **additives** used in foods.

"Food additives are substances added to food to maintain or improve its safety, freshness, **taste**, texture, or appearance.

An excerpt from "The Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011" is reproduced here for better understanding of the subject.

*(4)**Food additive** means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including **organoleptic**) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food results, or may be reasonably expected to result (directly or indirectly), in it or its byproducts becoming a component of or otherwise affecting the characteristics of such foods. The term does not include contaminants or substances added to food for maintaining or improving nutritional qualities."*

The addition of food additives / flavouring agents as explained above results in either becoming a component of the byproduct of original food or otherwise affects the characteristics of foods to which they are added. It is applicable to the instant case as well, that the addition of flavouring agent would change basic characteristic of the milk. It leaves no further doubt regarding the fact that 'adding flavours does constitute a preparation', changing the basic nature and properties of the food, improving the organoleptic experience leading to better appreciation of the food.

Now, we look into the objection of the appellant that the AAR, while passing its ruling, has jumped into an extraneous document pertaining to the year 2018 i.e. the matters recorded in the agenda of the GST council held on 22.12.2018, ignoring the developments during the period 2015-2018. In order to address this issue, we discuss the chronology of the events, how the flavoured milk has been classified over the years under different heads and entries. The flavoured milk was initially classified under entry 0401.11 under the 6 digit code system, which prevailed till 27.02.2005 as under:

Heading No.	Sub-heading No.	Description of goods	Rate of duty
(1)	(2)	(3)	(4)
04.01	0401.11	Flavoured milk, whether sweetened or not, put up in unit containers and ordinarily intended for sale.	Nil.

Later on, even under the 8 digit code introduced from 28.02.2005, flavoured milk was categorically placed under chapter IV Heading No.0402 9990 as under

CHAPTER 4

DAIRY PRODUCE; BIRD'S EGGS; NATURAL HONEY; EDIBLE PRODUCTS OF ANIMAL ORIGIN, NOT ELSEWHERE SPECIFIED OR INCLUDED

Notes :-

1. The expression 'milk' means full cream milk or partially or completely skimmed milk.

Tariff Item	Description of goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
0401	Milk and cream, not concentrated nor containing added sugar or other sweetening matter.		
0402	Milk and cream, concentrated or containing added sugar or other sweetening matter.		
0402 91	Not containing added sugar or other sweetening matter.		
0402 99	Other		
0402 99 10	Whole milk	kg.	Nil
0402 99 20	Condensed milk	kg.	16%
0402 99 90	Other	kg.	Nil

Further, the classification of the products in question had been changed, vide the basic Notification No. 3/2005-C.E., which is a general exemption notification prescribing effective rate for various excisable goods, and it is under this general exemption notification that Sr. No. 11A has been inserted from 15-6-2007 thereby specifying nil rate of duty for flavoured milk of animal origin as under

Sr. No.	Notification No. and date	Amendments			
(1)	(2)	(3)			
1.	3/2005-Central Excise dated the 24th February, 2005 [G.S.R. 95(E), dated the 24th February, 2005]	In the said notification, in the Table, after S. No. 11 and the entries relating thereto, the following S. No. and entries shall be inserted, namely :-			
		(1)	(2)	(3)	(4)
		"11A.	2202 90 30	Flavoured milk of animal origin	Nil"

Thus, when we look into the turn of events over a period of time during the Central Excise regime, the goods under dispute had been finally placed under Chapter 22 with a specific entry mentioned as “flavoured milk of animal origin” with classification particulars as falling under 2202 90 30 by way of Notification No. 3/2005-C.E as mentioned above, which makes it evident that it needs no further interpretation in the matters of classification of the goods in dispute.

Now we look into the issue that, in continuation to the Central Excise regime, whether the same interpretation had been applied to the GST regime or otherwise. The product under dispute i.e., ‘flavoured milk’ as such is not mentioned as a specific entry in any of the schedules as per the Notification No.1/2017 Central Tax (Rate) dt: 28.6.2017. We examine the competing entries under Schedule I with Tax Rate of 5% (CGST 2.5% +SGST 2.5%) and under Schedule II with Tax Rate of 12% (CGST 6% +SGST 6%) as under

Schedule I - 2.5%

S.No	Chapter/Heading/ Sub-Heading/Tariff item	Description of Goods
8	0402	Milk and cream, concentrated or containing added sugar or other sweetening matter, including skimmed milk powder, milk food for babies[other than condensed milk]

Schedule II - 6%

S.No	Chapter/Heading/ Sub-Heading/Tariff item	Description of Goods
50	2202 90 30	Beverages containing milk

As there is ambiguity in the classification of the instant product, ‘flavoured milk’ i.e., whether it is to be considered under either 0402 or 2202 90 30 as

mentioned above, the issue has been discussed and recorded in the Agenda for 31st GST Council Meeting Volume-II dt: 22.12.2018 as under, clarifying the classification issue.

S. No	Description	HSN	Present GST Rate (%)	Requested GST Rate (%)	Comments
18	Flavoured Milk	2202	12	Clarification on that it is classifiable under Chapter 4	<p>1. The Explanatory Notes to HSN describe the goods classifiable under the heading 0402 as under:</p> <p><i>This heading covers milk (as defined in Note 1 to this Chapter) and cream, whether or not pasteurised, sterilised or otherwise preserved, homogenised or peptonised; but it excludes milk and cream which have been concentrated or which contain added sugar or other sweetening matter (heading 04.02) and curdled, fermented or acidified milk and cream (heading 04.03).</i></p> <p><i>The products of this heading may be frozen and may contain the additives referred to in the General Explanatory Note to this Chapter. The heading also covers reconstituted milk and cream having the same qualitative and quantitative composition as the natural products.</i></p> <p>2. Flavoured milk is classifiable under HS code 2202.</p> <p>3. Fitment Committee does not recommend issuance of such clarification.</p>

Now, we take up the objection raised by the appellant that the AAR decision on the matter relying merely on the inclusion of the impugned issue in the Agenda of the 31st GST Council meeting was arbitrary and whimsical.

In this regard, we agree with the contention of the appellant that there is a difference between 'Agenda' and 'Minutes' of the Meeting in the business parlance and at the same time, drawing a parallel between the rounds of discussion being held by the GST Council and its procedures in this context is a bit far- fetched in the opinion of this authority. As mentioned in the point 3 of the table above, it is reiterated that the fitment committee does not recommend any issuance of clarification as this issue is clarified at the level of the deliberations of the 'Agenda' itself. The GST Council would have released certainly a clarification in the 'Minutes' of the meeting had there been any necessity being felt in issuing one.

It is also the opinion of this authority that there is a sanctity associated with the procedures adopted by the Council and the decisions made at the deliberations

held thereby, and discussing every point threadbare in letter and in isolation would lead the argument nowhere.

The appellant finally contends that the pre-dominant constituent of the product is milk and hence the “flavoured milk” does not merit classification under beverage containing milk, under tariff heading 2202 9930, but merits classification as milk, under tariff heading 0402.

In this context we proceed to examine whether the flavoured milk can be covered under chapter 4 or in its competing entry under chapter 22.

Chapter 4 deals with “*Goods of Dairy produce; birds’ eggs; natural honey; edible products of animal origin, not elsewhere specified or included*”. The qualifier here that it is “not elsewhere specified or included” carries enormous importance. Now we look into the issue whether the product in question is mentioned elsewhere or not. Chapter 22 dealing with goods /items of “Beverages, spirits and vinegar” carries the following entry as under.

CHAPTER 22			
<i>Beverages, spirits and vinegar</i>			
Tariff Item	Description of goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
2202 99 30	Beverages containing milk	1	12%

Now we proceed to examine whether ‘flavoured milk’ can be considered a beverage containing milk. In common parlance, a beverage is “(chiefly in commercial use) a drink other than water. It is a liquid for drinking especially such liquid other than water (as tea, milk, fruit juice, beer) usually prepared (as by flavouring, heating, admixing) before being consumed”. The instant product, the flavoured milk is undoubtedly a beverage containing milk. It is moreover, a ‘preparation’ which was proved supra, substantiating the present argument.

It could be inferred from the above discussion that even though the product in question is a dairy produce and also an edible product of animal origin, the qualifier that it is “not elsewhere specified or included” makes it ineligible to be classified under the chapter 4. The product in dispute as it is already specified and included under chapter 22 dealing with goods /items of “Beverages, spirits and vinegar” makes it ineligible to be classified under chapter 4.

Thus, the commodity ‘flavoured milk’ merits classification under beverage containing milk under tariff heading 2202 90 30. The rate of tax applicable for the said tariff item is 12% GST (6% CGST + 6% SGST) under entry no. 50 of Schedule II of Notification No.1/2017 – Central (Rate) dated 28.06.2017 as amended.

In view of the aforesaid, we are of the opinion that the Ruling of the AAR is in tune with legal position and it needs no interference and the appeal is accordingly dismissed.

ORDER

We confirm and uphold the decision of the lower Authority.

Sd/- Peeyush Kumar
Chief Commissioner (State Tax)
Member

Sd/- Naresh Penumaka
Principal Chief Commissioner (Central Tax)
Member

//t.c.f.b.o//

Deputy Commissioner (ST)

TO

1) M/s. Tirumala Milk Products Pvt Ltd. 12-8-8, Prakash Nagar, Narasaraopet
Guntur, Andhra Pradesh -522601 **(By Registered Post)**.

Copy to

1. The Assistant Commissioner of State Tax, Narasaraopet Circle, Narasaraopet
Division **(By Registered Post)**.

2. The Superintendent, Central Tax Narasaraopet –II Range, CGST Guntur Division
(By Registered Post).

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax,
Eedupugallu, Vijayawada, (A.P).

2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central
Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port
area, Visakhapatnam-530035 **(By Registered Post)**.